

NON-REPATRIABLE INVESTMENT BY NRIs AND OCIs UNDER FEMA: AN ANALYSIS – PART - 1

BHAUMIK GODA | SAUMYA SHETH | DEVANG VADHIYA
Chartered Accountants

This is the 11th Article in the ongoing NRI series dealing with “Non-repatriable Investment by NRIs and OCIs under FEMA — An Analysis.”

Summary

“What cannot be done directly, cannot be done indirectly - Or can it be?”

FEMA's golden rule has always been that what you cannot do directly, you cannot do indirectly—but then comes Schedule IV, sneaking in like that one friend who always finds a way out. It's the ultimate legislative exception, allowing NRIs and OCIs to invest in India as if they never left, minus the luxury of an easy exit. Curious? Dive into the fascinating world of non-repatriable investments — you won't be disappointed (unless, of course, you were hoping to take the money back out quickly!)

INTRODUCTION AND REGULATORY FRAMEWORK

Non-resident investors — including Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs), and even foreign entities — can invest in India under the Foreign Exchange Management Act, 1999 (FEMA). FEMA provides a broad statutory framework, which is supplemented by detailed rules and regulations issued by the government and the Reserve Bank of India (RBI). In particular, the **Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules)** (issued by the Central Government) and the **Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (Reporting Regulations)** (issued by RBI) lay down the regime for foreign investments in "non-debt instruments." These are further elaborated in the **RBI Master Direction on Foreign Investment in India**, which consolidates the rules and is frequently consulted by practitioners.

Under this framework, foreign investment routes are categorised by schedules to the NDI Rules. Of particular interest are **Schedule I (Foreign Direct Investment on a repatriation basis)**, **Schedule III (NRI investments under the Portfolio Investment Scheme on a repatriation basis)**, **Schedule IV**

(NRI / OCI investments on non-repatriation basis), and Schedule VI (Investment in Limited Liability Partnerships). This article focuses on the nuances of non-repatriable investments by NRIs / OCIs under Schedule IV, contrasting them with repatriable investments and other routes. We will examine the legal definitions, eligible instruments, sectoral restrictions, compliance obligations, and the practical implications of choosing the non-repatriation route, with a structured analysis suitable for legal professionals.

DEFINITION OF NRI AND OCI UNDER FEMA; ELIGIBILITY TO INVEST

Non-Resident Indian (NRI) – An NRI is defined in FEMA and the NDI Rules as an individual who is a **person resident outside India and is a citizen of India**. In essence, Indian citizens who reside abroad (for work, education, or otherwise) become NRIs under FEMA once they cease to be “person resident in India” as per Section 2(w) of FEMA. Notably, this definition **excludes foreign citizens**, even if they were formerly Indian citizens – such persons are not NRIs for FEMA purposes once they have given up Indian citizenship.

Overseas Citizen of India (OCI) – An OCI for FEMA purposes means an individual resident outside India who is registered as an OCI cardholder under Section

7A of the Citizenship Act, 1955. In practical terms, these are foreign citizens of Indian origin (or their spouses) who have obtained the OCI card. OCIs are a separate category of foreign investors recognized by FEMA, often extending the same investment facilities as NRIs. In summary, NRIs (Indian citizens abroad) and OCIs (foreign citizens of Indian origin) are both eligible to invest in India, subject to the FEMA rules.

Eligible Investors under the Non-Repatriation Route – Schedule IV specifically permits the following persons to invest on a non-repatriation basis):

- NRIs (individuals resident outside India who are Indian citizens);
- OCIs (individuals resident outside India holding OCI cards);
- Any overseas entity (company, trust, partnership firm) incorporated outside India which is owned and controlled by NRIs or OCIs.

This extension to entities owned / controlled by NRIs / OCIs means that even a foreign-incorporated company or trust, if predominantly NRI / OCI-owned, can use the NRI non-repatriation route. However, as discussed later, such entities do not enjoy certain repatriation facilities (like the USD 1 million asset remittance) that individual NRIs do. Moreover, it is important to note that while these NRI / OCI-owned foreign entities are eligible for Schedule IV investments, they cannot invest in an Indian partnership firm or sole proprietorship under this route — only individual NRIs / OCIs can do so in that case.

NRIs and OCIs have broadly two modes to invest in India: (a) on a **repatriation basis** (where eventual returns can be taken abroad freely), or (b) on a **non-repatriation basis** (where the investment is treated as a domestic investment and cannot be freely taken out of India). Both modes are legal, but they carry different conditions and implications, as explained below.

WHAT ARE NON-DEBT INSTRUMENTS? – PERMISSIBLE INVESTMENT INSTRUMENTS

Under FEMA, all permissible foreign investments are classified as either **debt instruments** or **non-debt instruments**. Our focus is on non-debt instruments, which essentially cover equity and equity-

like investments. The NDI Rules define "non-debt instruments" expansively to include:

- **Equity instruments** of Indian companies – e.g. equity shares, fully and mandatorily convertible debentures, fully and mandatorily convertible preference shares, and share warrants. (These are often referred to simply as "FDI" instruments.)
- **Capital participation in LLPs** (contributions to the capital of Limited Liability Partnerships).
- **All instruments of investment recognized in the FDI policy**, as notified by the Government from time to time (a catch-all for any other equity-like instruments).
- **Units of Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs), and Infrastructure Investment Trusts (InvITs).**
- **Units of mutual funds or Exchange-Traded Funds (ETFs)** that invest more than 50 per cent in equity (i.e. equity-oriented funds).
- **The junior-most (equity) tranche of a securitization structure.**
- **Immovable property in India** (acquisition, sale, dealing directly in land and real estate, subject to other regulations).
- **Contributions to trusts** (depending on the nature of the trust, e.g. venture capital trusts, etc.).
- **Depository receipts** issued against Indian equity instruments (like ADRs / GDRs).

All the above are considered non-debt instruments. Thus, when an NRI or OCI invests on a non-repatriation basis, it can be in any of these forms. In practice, the most common instruments for NRI / OCI non-repatriable investment are equity shares of companies, capital contributions in LLPs, units of equity-oriented mutual funds, and investment vehicles like AIFs / REITs.

It is important to note that **debt instruments** (such as NCDs, bonds, and government securities) are governed by a separate set of rules (the Foreign Exchange Management (Debt Instruments) Regulations) and generally fall outside the

scope of Schedule IV. NRIs / OCIs can also invest in some debt instruments (for example, NRI investments in certain government securities on a non-repatriation basis are permitted up to a limit, but those are subject to different rules and are not the focus of this article.

REPATRIABLE VS. NON-REPATRIABLE INVESTMENTS: MEANING AND LEGAL DISTINCTION

Repatriable Investment means an investment in India made by a person resident outside India which is eligible to be repatriated out of India, i.e. the investor can **bring back the sale proceeds or returns to their home country** freely (net of applicable taxes) in foreign currency. In other words, both the dividends/ interest (current income) and the capital gains or sale proceeds (capital account) are transferable abroad in a repatriable investment without any ceiling (subject to taxes). Most foreign direct investments (FDI) in India are on a repatriation basis, which is why repatriable NRI investments are treated as foreign investments and counted towards foreign investment caps. For instance, if an NRI invests in an Indian company under Schedule I (FDI route) or Schedule III (portfolio route) on a repatriable basis, it is **counted as foreign investment (FDI / FPI)**, with all attendant rules.

Non-Repatriable Investment means the investment is made by a non-resident, but **the sale or maturity proceeds cannot be taken out of India** (except to the limited extent allowed). The NDI Rules define it implicitly by saying, “investment on a non-repatriation basis has to be construed accordingly” from the repatriation definition. In simple terms, this means the principal amount invested **and** any capital gains or sale proceeds **must remain in India**. The investor cannot freely convert those rupee proceeds into foreign currency and remit abroad. Such investments are essentially treated as **domestic investments** — the NDI Rules explicitly deem any investment by an NRI / OCI on a non-repatriation basis to be **domestic investment, on par with investments made by residents**. This distinction has crucial legal effects: **NRI/OCI non-repatriable investments are not counted as foreign investments for regulatory purposes**. They do not come under FDI caps or sectoral limits (since they are treated like resident equity). This was confirmed by India’s DPIIT (Department for Promotion of Industry and Internal Trade) in a clarification that downstream investments by a company owned and controlled by

NRIs on a non-repatriation basis will not be considered indirect FDI. Effectively, **non-repatriable NRI / OCI investments enjoy the flexibility of domestic capital but with the sacrifice of free repatriation rights**.

Advantages of Non-Repatriation Route: The non-repatriable route (Schedule IV) offers NRIs and OCIs significant advantages in terms of flexibility and compliance:

- **No Foreign Investment Caps:** Since it is treated as domestic investment, an NRI/OCI can invest **without the usual foreign ownership limits**. For example, under the portfolio investment route, NRIs cannot exceed 5 per cent in a listed company (10 per cent collectively), but under non-repatriation, there is **no such limit** — an NRI could potentially acquire a much larger stake in a listed company under Schedule IV (outside the exchange) without breaching FEMA limits. Similarly, total NRI / OCI investment can go beyond 10/24 per cent aggregate because Schedule IV holdings are not counted as foreign at all.

- **Simplified Compliance:** Many of the onerous requirements applicable to FDI — e.g. adherence to pricing guidelines, filing of RBI reports, sectoral conditionalities, mandatory approvals — are relaxed or not applicable for non-repatriable investments (since regulators treat it like a resident’s investment). We detail these compliance relaxations below.

- **Current income can be freely repatriable:** Current income arising from such investments like interest, rent, dividend, etc., is freely repatriable without any limits and is not counted in the \$1mn threshold.

- **Deemed Domestic for Downstream:** As noted, if an NRI/OCI-owned Indian entity invests further in India, those downstream investments are not treated as FDI. This can allow greater expansion without triggering indirect foreign investment rules.

Drawbacks of the Non-Repatriation Route: The obvious trade-off is **illiquidity from an exchange control perspective**. The investor’s capital is locked in India. Specifically:

- **Inability to Repatriate Capital Freely:** The principal amount and any capital gains cannot be freely converted and sent abroad. The investor must either reinvest or keep the funds in India (in an NRO account)

after exit, subject to a limited annual remittance (discussed later).

- **Perpetual Rupee Exposure:** Since eventual proceeds remain in INR, the investor bears currency risk on the investment indefinitely, which foreign investors might be unwilling to take for large amounts.

- **Exit Requires Domestic Buyer or Special Approval:**

To actually get money out, the NRI / OCI may need to convert the investment to repatriable by selling it to an eligible foreign investor or seek RBI permission beyond the allowed limit. This adds a layer of uncertainty for the exit strategy.

- **Not Suitable for Short-Term Investors:** This route is generally suitable for long-term investments (often family investments in family-run businesses, real estate purchases, etc.) where the NRI is not looking to repatriate in the near term. It is less suitable for foreign venture capital or private equity, which typically demand an assured exit path.

INVESTMENT UNDER SCHEDULE IV: PERMITTED INSTRUMENTS AND SECTORAL CONDITIONS

What Schedule IV Allows: Schedule IV of the NDI Rules (titled "Investment by NRI or OCI on the non-repatriation basis") lays out the scope of investments NRIs / OCIs can make on a non-repatriable basis. In summary, **NRIs/OCIs (including their overseas entities) can, without any limit, invest in or purchase the following on a non-repatriation basis:**

- **Equity instruments of Indian companies** – listed or unlisted shares, convertible debentures, convertible preference shares, share warrants – **without any limit**, whether on a stock exchange or off-market.

- **Units of investment vehicles** – units of AIFs, REITs, InvITs or other investment funds — **without limit**, listed or unlisted.

- **Contributions to the capital of LLPs** – again, **without limit**, in any LLP (subject to sectoral restrictions discussed below).

- **Convertible notes of startups** – NRIs / OCIs can also subscribe to **convertible notes** issued by Indian startups, as allowed under the rules, on a non-

repatriation basis.

Additionally, Schedule IV explicitly provides that **any investment made under this route is deemed to be a domestic investment** (i.e. treated at par with resident investments). This means the general FDI conditions of Schedule I do not apply to Schedule IV investments unless specifically mentioned.

Sectoral Restrictions – Prohibited Sectors:

Despite the broad freedom, **Schedule IV carves out certain prohibited sectors where even NRI / OCI non-repatriable investments are NOT permitted.** According to Para 3 of Schedule, an NRI or OCI (including their companies or trusts) shall not invest under non-repatriation in:

- **Nidhi Company** (a type of NBFC doing mutual benefit funds among members);

- **Companies engaged in agricultural or plantation activities** (this covers farming, plantations of tea, coffee, etc., and related agricultural operations);

- **Real estate business or construction of farmhouses;**

- **Dealing in Transfer of Development Rights (TDRs).**

These mirror some of the standard FDI prohibitions, with a key addition: agricultural / plantation is completely off-limits under Schedule IV (whereas under FDI policy, certain agricultural and plantation activities are permitted up to 100 per cent with conditions). The term **"real estate business"** is defined (by reference to Schedule I) to mean dealing in land and immovable property **with a view to earning profit from them** (buying and selling land/buildings). Notably, the **development of townships, construction of residential or commercial premises, roads or infrastructure, etc., is specifically excluded from the definition of "real estate business"**, as is **earning rent from property without transfer**. So, an NRI / OCI can invest in a construction or development project or purchase property for earning rent on a non-repatriation basis (since that is not considered a "real estate business" for FEMA purposes) but cannot invest in a pure real estate trading company.

Implication – Some Sectors Allowed on Non-Repatriation that are Prohibited for FDI, and vice

versa: Because Schedule IV's prohibited list is somewhat different from Schedule I (FDI) prohibited list, there are interesting differences:

- **Additional Sectors Open under Schedule IV:** Certain sectors like **lottery, gambling, casinos, tobacco manufacturing, etc.**, which are prohibited for any FDI under Schedule I, are **not mentioned in Schedule IV's prohibition list**. This may imply that an NRI / OCI could invest in such businesses on a non-repatriation basis. For example, a casino business in India cannot receive any FDI (foreign investor money on a repatriable basis), but it **could receive NRI/OCI investment as a domestic investment under Schedule IV. However, such investments may be subject to provisions or prohibitions in various other laws and Statewise restrictions in India, and therefore, one must be careful in making such investments.**

- From a policy perspective, this leverages the idea that an Indian citizen abroad is still treated akin to a resident for these purposes. Thus, apart from the specific exclusions in Schedule IV, **all other sectors (even those barred to foreign investors) are permissible for NRIs / OCIs on non-repatriation**. This provides NRIs/OCIs a unique opportunity to invest in sensitive sectors of the economy, which foreigners cannot, theoretically increasing the investment funnel for those sectors via the Indian diaspora.

- **Conversely, Some Investments Allowed via FDI Are Barred in Non-Repatriation:** There are cases where FDI rules are more liberal than the NRI non-repatriable route. A prime example is **plantation and agriculture**. Under FDI (Schedule I), certain plantation sectors (like tea, coffee, rubber, cardamom, etc.) are allowed 100 per cent foreign investment under the automatic route (with conditions such as mandatory divestment of a certain percentage within time for tea). However, **Schedule IV flatly prohibits NRIs from investing in agriculture or plantation** without exception. Thus, a foreign company could invest in a tea plantation company on a repatriable basis (counting as FDI), but an NRI cannot invest in the same on a non-repatriable basis, ironically. Another example: **Print media** — FDI in print media (newspapers / periodicals) is restricted to 26 per cent with Government approval under FDI policy. If an Indian company is in the print media business, an NRI / OCI could still invest on a non-repatriable basis (since Schedule IV's company restrictions don't list print

media) — meaning potentially up to 100% as domestic investment. However, **if the print media business is structured as a partnership firm or proprietorship, Schedule IV (Part B) prohibits NRI investment** in it. We see a regulatory quirk: an NRI can invest in a print media company on non-repatriation (domestic equity, no specific cap) but not in a print media partnership firm. These inconsistencies require careful attention when structuring investments.

In summary, **NRIs / OCIs have a broader canvas in some respects under Schedule IV, but must be mindful of the specifically forbidden areas**. As a rule of thumb, apart from Nidhi, plantation / agriculture, real estate trading, and farmhouses / TDRs, most other activities are allowed. NRIs have leveraged this to invest in real estate development projects, infrastructure, and even sectors like multi-brand retail by ensuring their investments are non-repatriable (thus not triggering the foreign investment prohibitions or caps). On the other hand, they cannot use this route for farming or plantation businesses even if foreign investors could via FDI.

Special Case – Investment by NRIs / OCIs in Border-Sharing Countries: In April 2020, India introduced a rule (now embodied in NDI Rules) that any investment from an entity or citizen of a country that shares a land border with India (e.g. China, Pakistan, Bangladesh, etc.) requires prior Government approval, regardless of sector. This was to curb opportunistic takeovers. This rule **applies to NRIs / OCIs as well if they are residents of those countries**. However, notably, that restriction is relevant **only for investments on a repatriation basis**. If an NRI / OCI residing in, say, China or Bangladesh wants to invest under the non-repatriation route, **Schedule IV does not impose the same approval requirement**. In effect, an NRI/OCI in a neighbouring country can still invest in India as a de facto domestic investor under Schedule IV without going through government approval, whereas the same person investing under a repatriable route would face a clearance hurdle. This exception again underscores the policy view of NRI non-repatriable funds as akin to Indian funds. Whilst permissible, in view of authors, considering the geo-political climate, care and caution need to be exercised. Loophole or policy openness may not be the final answer, as national interest always comes first.

PRICING GUIDELINES AND VALUATION — ARE THEY APPLICABLE?

One significant compliance relief for non-repatriable

investments is in **pricing regulations**. Under FEMA, when foreign investors invest in or exit from Indian companies on a repatriation basis, there are strict pricing guidelines to ensure shares are not issued at an unduly low price or purchased at an unduly high price (to prevent outflow/inflow of value unfairly). For instance, the issue of shares to a foreign investor must typically be at or above fair market value (as per internationally accepted pricing methodology), and transfer from resident to foreign investor cannot be at less than fair value, etc. **These pricing restrictions do not apply to investments under Schedule IV. Since Schedule IV investments are treated as domestic, the law does not mandate adherence to the pricing formulae of Schedule I.**

Practical effect: Indian companies can issue shares to NRIs / OCIs on a non-repatriation basis at *face value or book value or any concessional price* they choose, even if that is below the fair market value, without contravening FEMA. Similarly, NRIs/OCIs could potentially buy shares from resident holders at a negotiated price without being bound by the ceiling that would apply if the NRI were a foreign investor on a repatriation basis. This flexibility is often useful in family arrangements or preferential allotments where prices may be deliberately kept low for the NRI (which would otherwise trigger questions under FDI norms). For example, an Indian family-owned company can allot shares to an NRI family member at par value under Schedule IV, even if the fair value is much higher — a practice not allowed if the NRI were taking them on a repatriable basis. **The only caution** is that the Income Tax Act's fair value rules (for deemed income on undervalued transactions) might still apply, but from a FEMA standpoint, it's permissible.

To illustrate, the RBI Master Directions explicitly note that **pricing guidelines are not applicable for investments by persons resident outside India on a non-repatriation basis**, as those are treated as domestic investments. Thus, **NRIs / OCIs have an advantage in valuation flexibility under Schedule IV.**

REPORTING AND COMPLIANCE REQUIREMENTS

Another area of divergence is in **regulatory reporting**. Normally, any foreign investment coming into an Indian company must be reported to RBI (through its authorised

bank) via forms on the FIRMS portal (previously Form FC-GPR for new issues, Form FC-TRS for transfers, etc.). However, **investments by NRIs / OCIs on a non-repatriation basis do not require filing the typical foreign investment reports** like FC-GPR. The rationale is that since these are not counted as foreign investments, the RBI does not need to capture them in its foreign investment data.

Indeed, **no RBI reporting is prescribed for a fresh issue / allotment of shares under Schedule IV.** An NRI/OCI investing on a non-repatriable basis can be allotted shares without the company filing any form to RBI (By contrast, if the same shares were issued under FDI, a Form SMF/FC-GPR would be required within 30 days.) That said, it is a **best practice** for the investee company or the NRI to **intimate the AD bank** in a letter about the receipt of funds and the fact that the shares are issued on a non-repatriation basis. This helps create a record, so that if in future any question arises, the bank/RBI is aware those shares were categorized as non-repatriable from the start.

One exception to the no-reporting rule is when **there is a transfer of such shares to a person on a repatriation basis**. If an NRI/OCI holding shares on a non-repatriable basis sells or gifts them to a foreign investor or NRI on a repatriable basis, that transaction **does trigger reporting (Form FC-TRS)** because now those shares are becoming foreign investments. The responsibility for filing the FC-TRS lies on the resident transferor or transferee, as applicable. We will discuss transfers shortly, but in summary: **no reporting when NRIs invest non-repatriable initially, but reporting is required when the character of investment changes to repatriable via a transfer.**

It's important to maintain **proper records in the company's books** classifying NRI / OCI holdings as non-repatriable. Practitioners note that if a company mistakenly records an NRI's holding as repatriable FDI and files forms or treats it as a foreign holding in compliance reports, it could lead to regulatory confusion or even penalties. For instance, it might appear the company exceeded an FDI cap when, in reality, the NRI portion should have been excluded. Therefore, both the investor and investee company should internally document the nature of the investment (e.g. through a board resolution noting the shares are issued under Schedule IV, non-repatriation).

In summary, **compliance for Schedule IV investments is lighter**: no entry-level RBI approvals (it's an automatic route in all cases), no pricing certification, and no routine filing for allotments. Contrast that with Schedule I investments, where one must comply with valuation norms and file forms within the prescribed time. This ease of doing business is a key attraction of the non-repatriable route for many NRIs.

Mode of Payment and Repatriation of Proceeds

Funding the Investment: An NRI/OCI investing on a non-repatriation basis can fund the investment through any of the standard channels for NRI investments. Permissible modes include:

- **Inward remittance** from abroad through normal banking channels (i.e. sending foreign currency, which is converted to INR for investment).
- **Payment out of an NRE or FCNR account** maintained in India (these are rupee or foreign currency accounts which are repatriable).
- **Payment out of an NRO account** in India (Non-Resident Ordinary account, which holds the NRI's funds from local sources in INR).

Use of an NRO account is notable — since NRO balances are non-repatriable (beyond the USD 1 million a year), routing payment from NRO naturally aligns with the non-repatriable nature of the investment. But even if funds came from an NRE/FCNR (which are repatriable accounts), once invested under Schedule IV, the money **loses its repatriable character** for the principal and becomes subject to Schedule IV restrictions.

Credit of Sale / Disinvestment Proceeds: When an NRI / OCI eventually sells the investment or the Indian company liquidates, the **sale proceeds must be credited only to the NRO account of the investor**. This rule is crucial — it ensures the money remains in the non-resident's ordinary rupee account (NRO), which is not freely repatriable. Even if the original investment was paid from an NRE account, the exit money cannot go back to NRE; it has to go to an NRO (or a fresh NRO if the investor doesn't have one). Once in NRO, those funds are under Indian jurisdiction with limited outflow rights.

Repatriation of Proceeds — The USD 1 Million

Facility: FEMA does provide a limited facility for NRIs / OCIs to remit out funds from their NRO accounts/ sale proceeds under the **Remittance of Assets Regulations, 2016. A Non-Resident Indian or PIO is allowed to remit up to USD 1,000,000 (One Million USD) per financial year** abroad from an NRO account or from the sale proceeds of assets in India, including capital gain. This is a general limit for all assets combined per person per year. This means an NRI who sold shares that were on a non-repatriable basis can utilise this route to gradually repatriate the money, up to \$ 1M (USD One Million) annually. Notably, this facility is **only available to individuals (NRIs / PIOs)** and not to companies or other entities. So, if an NRI made a large investment and eventually exited, they could take out \$1M each year (approximately ₹8.75 crore at current rates) from India. Any amount beyond that in a year would require **special RBI approval**.

In practice, RBI approval for exceeding the USD 1M cap is rarely granted except in exceptional hardship cases. RBI typically expects the NRI to stagger the remittances within the allowed limit across years. Therefore, investors should plan accordingly if the sums are large — it could take multiple years to fully repatriate the corpus unless they find some other mechanism (like transferring the shares to a repatriable route investor before sale, etc.). It has been observed that **RBI is generally not inclined to allow one-time large remittances** beyond the automatic limit, emphasizing that the non-repatriable route is meant for money that essentially stays in India with only a slow trickle out.

No \$1M facility for foreign entities: As mentioned, if the investor was not an individual but an overseas company or trust owned by NRIs / OCIs, that entity does **not qualify as an NRI or PIO under the Remittance of Assets rules**. Thus, it cannot directly avail of the \$1M automatic repatriation. Such entities would have to apply to RBI for any repatriation, which is uncertain. This is why advisors often recommend that if repatriation might eventually be desired, the investment should be structured in the individual NRI's name (or at least eventually transferred to the individual NRI before exit). By keeping the investor as a natural person, the exit flexibility using the \$1M per year route remains available.

Repatriation of Current Income: Importantly, **current income (yield) from the investment is freely repatriable even if the investment itself is non-repatriable**. FEMA distinguishes between repatriation

of capital versus repatriation of current income such as dividends, interest, or rent. As a general rule, any dividend or interest earned in India by an NRI can be remitted abroad after paying due taxes, irrespective of whether the underlying investment was on a non-repatriation basis. RBI Master Circular confirms that authorised dealers may allow remittance of current income (like dividends, pension, interest, rent) from NRO accounts, subject to CA certification of taxes paid. This means an NRI who invested in shares under Schedule IV can still have the company declare dividends, and the NRI can **get those dividends out of India** without dipping into the \$1M capital remittance limit. Likewise, interest on any NRO deposits of the sale proceeds is repatriable as current income. This provision is a relief because it allows NRIs/OCIs to enjoy returns on their investment globally, even though the principal stays locked.

To summarize, the **inflow of funds** for non-repatriable investments is flexible (NRE/FCNR/NRO all allowed), but the **outflow of funds** is tightly controlled. NRIs

should channel the exit money into NRO and then plan systematic remittances of up to \$1M a year unless they intend to reuse the funds in India. Many simply reinvest in India, treating it as part of their India portfolio.

"And That's a Wrap... for Now!"

Congratulations! If you've made it this far, you're officially a FEMA warrior—armed with the wisdom of **Schedule IV** and the art of non-repatriable investments. We've explored how NRIs and OCIs can invest in India like residents and enjoy the flexibility that even FDI can't offer. But wait—what happens **when it's time to exit**? Can you **sell, transfer, or gift** these investments? Will FEMA let you walk away freely, or will it make you fill out just one more RBI form?

All this (and more!) is in **Part 2**, where we unlock the secrets of **transfers, repatriation limits, downstream investments, and compliance puzzles**. Stay tuned—because just like FEMA regulations, **this story isn't over yet!** ■